

Attorney's Docket No. 043455/274252

PATENT

In The United States Patent And Trademark Office

No.: 09/802,367 Confirmation No.: 8322
Applicant(s): Michael Last
Filed: March 9, 2001
Art Unit: 3629
Examiner: Mooneyham, Janice A
Title: SYSTEM AND METHOD FOR POSTING AVAILABLE TIME SLOTS
TO A NETWORK HUB

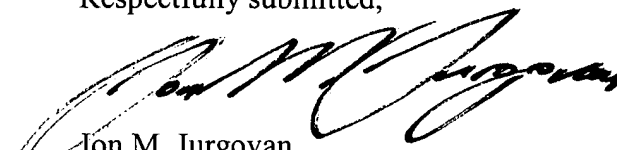
Docket No.: 043455/274252
Customer No.: 00826

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**APPEAL BRIEF TRANSMITTAL
(PATENT APPLICATION – 37 C.F.R. § 41.37)**

1. Transmitted herewith is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on February 20, 2006.
2. ☒ Applicant claims small entity status.
3. Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:
☒ small entity \$250.00
☐ other than small entity \$500.00
Appeal Brief fee due \$250.00
☐ Fee is Enclosed
☒ Please charge the fee to Deposit Account 16-0605.
☒ Any additional fee or refund may be charged to Deposit Account 16-0605.

Respectfully submitted,

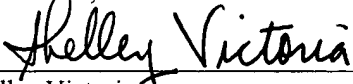

Jon M. Jurgovan
Registration No. 34,633

CUSTOMER NO. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Atlanta Office (404) 881-7000
Fax Atlanta Office (404) 881-7777

In re: Michael Last
Appl No.: 09/802,367
Filing Date: March 9, 2001
Page 2

"Express Mail" mailing label number EV 653456120 US
Date of Deposit April 20, 2006

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Appeal Brief-Patent, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450



Shelley Victoria

84-24 06

W AF-



Attorney's Docket No. 043455/274252

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No.: 09/802,367

Confirmation No.: 8322

Appellant(s): Michael Last

Filed: March 9, 2001

Art Unit: 2629

Examiner: MOONEYHAM, JANICE A.

Title: SYSTEM AND METHOD FOR POSTING AVAILABLE TIME SLOTS TO
A NETWORK HUB

Docket No.: 043455/274252

Customer No.: 00826

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 CFR § 41.37

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed February 20, 2006.

1. *Real Party in Interest.*

The real party in interest in this appeal is Last Minute Tee Times, Inc., a Georgia company, assignee of the above-referenced patent application.

2. *Related Appeals and Interferences.*

There are no related appeals and/or interferences involving this application or its subject matter.

3. *Status of Claims.*

Claims 61-67 were noted as pending in the Application and Appellant appeals the rejection of these Claims.

Claims 1-60 and 68-70 have been canceled without prejudice and are thus not addressed in this appeal.

4. *Status of Amendments.*

No amendments have been filed subsequent to final rejection.

04/25/2006 TBESHAH1 00000022 160605 09802367

01 FC:2402 250.00 DA

5. ***Summary of Claimed Subject Matter.***

Independent Claim 61 is directed to a method performed with a hub server (Fig. 1 – “Tee Times Reservation Hub Server”) that receives a request from a golfer computer (Fig. 1 – “Golf Course Client Browser”) via a communications network (represented in Fig. 1 by lines connecting hub server, golf course computers, and golfer computers). In response to the request, the hub server generates a single web page listing multiple tee times available for reservation by golfers at plurality of golf courses, in which the multiple tee times indicated as available for each golf course for a date are a subset of the available tee times (page 8, line 24 – page 9, line 4). The hub server transmits the single web page is transmitted over the communication network to the golfer computer (FIG.1; Field of the Invention – page 1, lines 8-11).

Claims 62 – 67 depend from Claim 61 and include all of its limitations, in addition to those set forth below.

Claim 62 recites additional steps of receiving specific tee times posted by a plurality of golf course users’ computers via the communications network, the golf course users’ computers located remotely from the hub server and the golfer computer; storing the available tee times in a database; and in response to the request, retrieving the available tee times from the database for use in the generating the single web page. (FIGS. 1-2; page 6, line 16 – page 8, line 23).

Claim 63 recites additional steps of receiving a reservation for a selected golf course and tee time from the user computer via the communications network; storing the reservation in the database; and transmitting the reservation to the computer of the selected golf course via the communications network . (Fig. 1; page 8, line 24 – page 9, line 4).

Claim 64 specifies that the communications network is the Internet (Field of the Invention – page 1, lines 8-11; Background of the Invention – page 1, lines 13-20).

Claim 65 specifies that the listing of the multiple available tee times are next-day tee times for respective golf courses (Summary of the Invention; page 5, lines 1-5).

Claim 66 specifies that the request designates a specific geographic region and the single web page is generated to list available tee times for only the golf courses in the specific geographic region (FIGS. 4A-4D (see “CRS_CITYID”; page 8, lines 10-15).

Claim 67 specifies that the request includes a date on which the golfer desires to play but does not require the golfer to specify the golfer's desired time of play in order to generate a list of available tee times (page 8, line 24 – page 9, line 4).

The claimed invention is not disclosed in the prior art, as explained in detail below.

6. ***Grounds of Rejection to be Reviewed on Appeal.***

I. Whether Claims 61-67 are Nonobvious under 35 U.S.C. 103(a) over the combination of the "GolfAgent website" and Official Notice

7. ***Argument.***

Claims 61-67 are Nonobvious under 35 U.S.C. §103(a) over the combination of www.GolfAgent.com ("the GolfAgent website") and Official notice

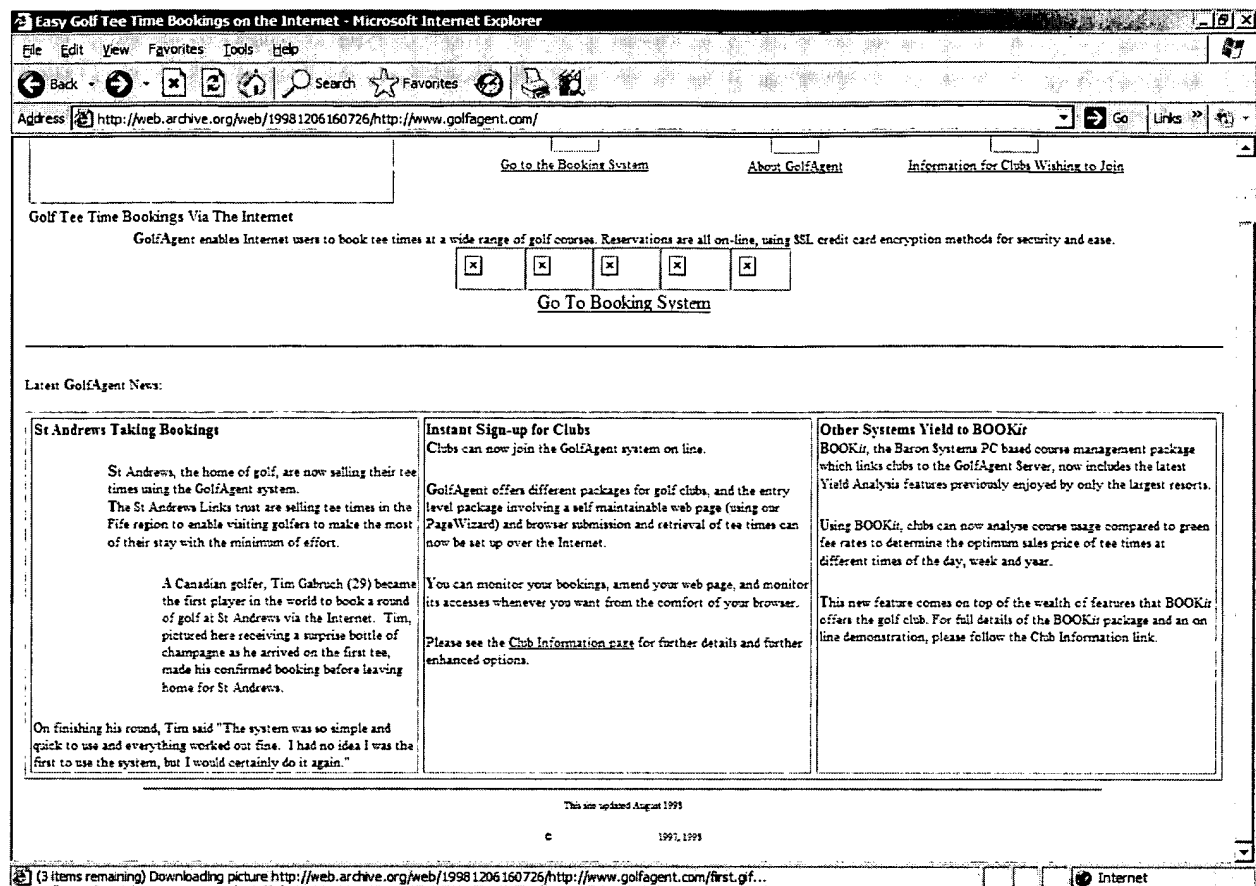
On Page 2, Item 2 of the Office Action dated October 7, 2005, Claims 61-67 were rejected under 35 U.S.C. §103(a) and being obvious in view of www.GolfAgent.com ("the GolfAgent website").

The GolfAgent website and the reasons that Claim 61-67 are patentable over the GolfAgent website, are addressed sequentially below.

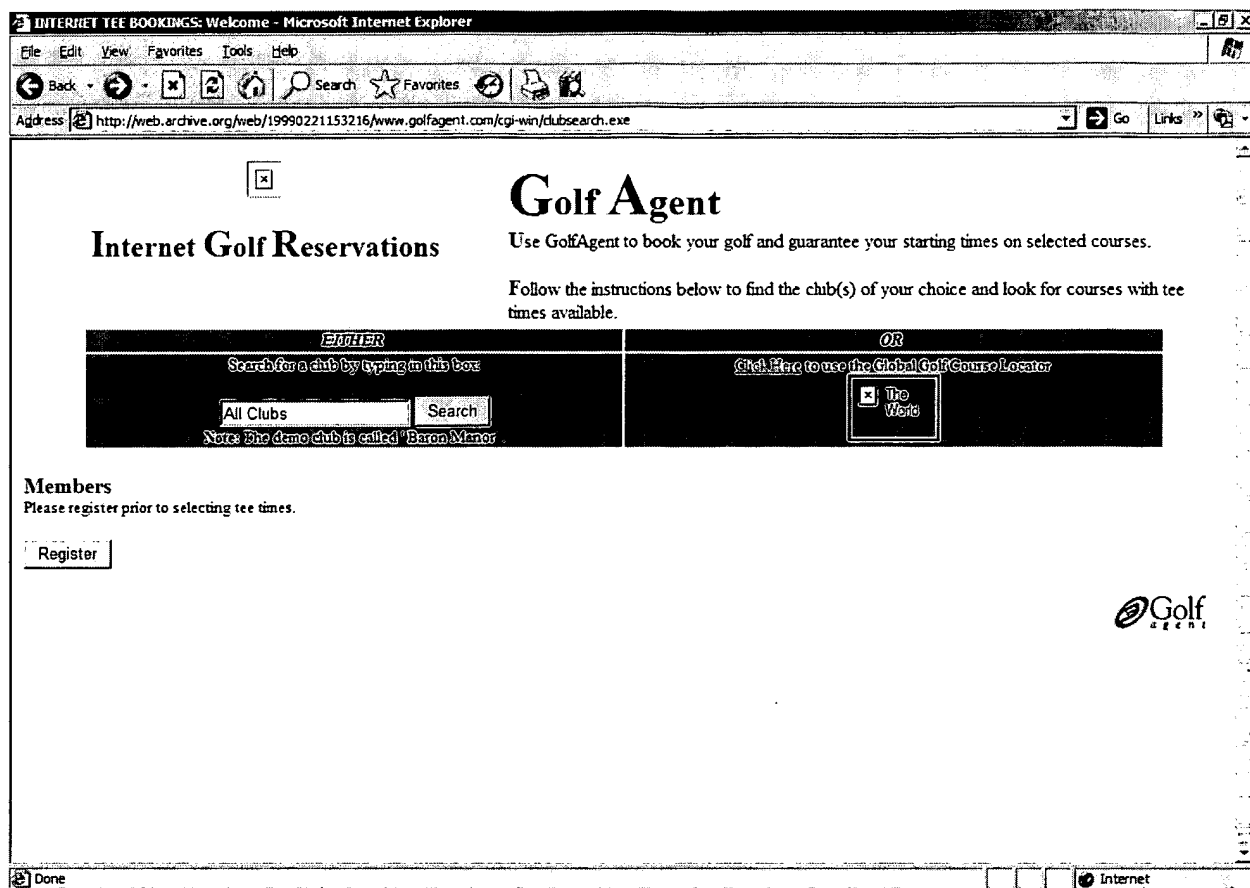
A. The GolfAgent Website

The Office Action relies only upon the 12/6/1998, 4/28/1999 and 5/2/1999 versions of the Golf Agent website, alleged to be available at www.archive.org. The subject application claims priority to provisional applications filed March 9, 2000 and March 11, 2000. There appears to be no 5/2/1999 version of the Golf Agent website available at the www.archive.org website.

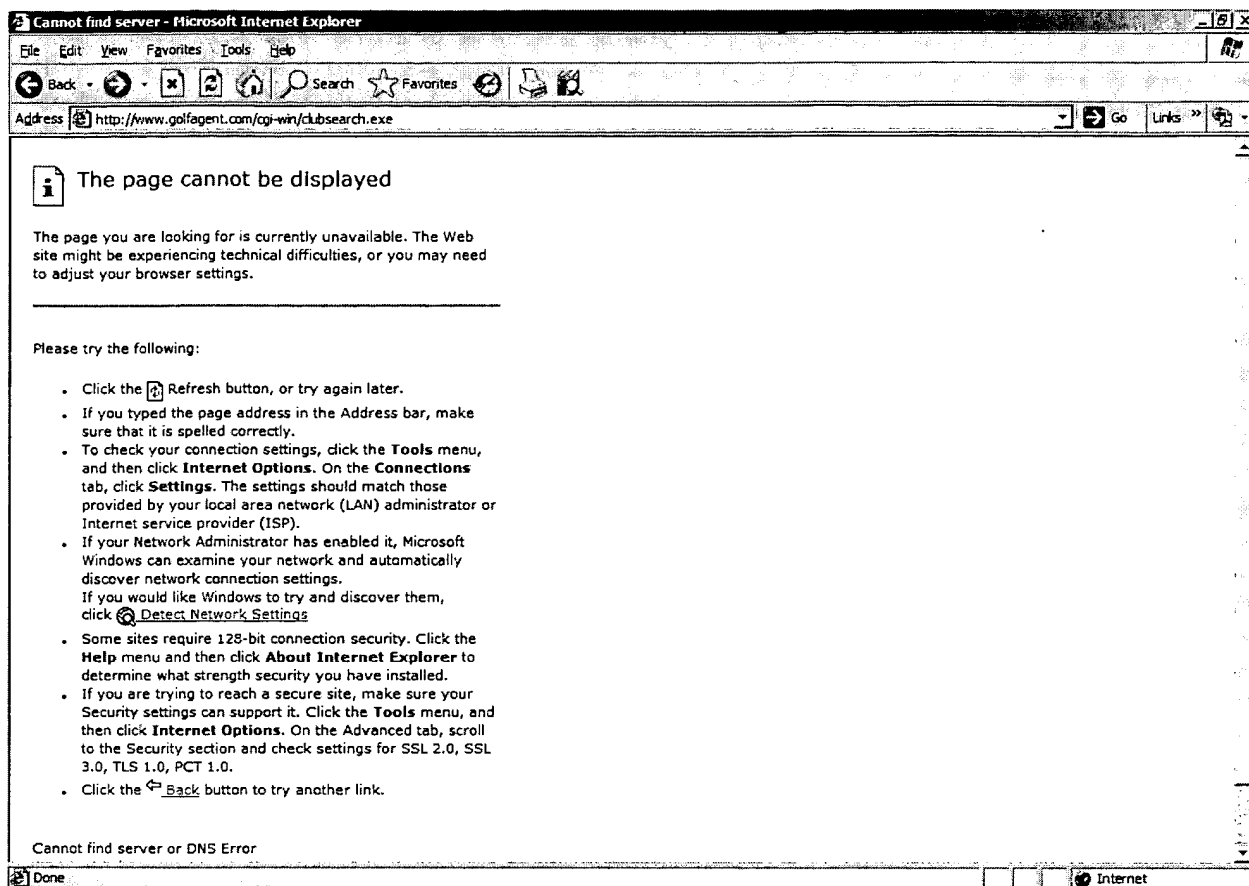
The 12/6/1998 version of the Golf Agent website alleges that it enables Internet users to book tee times at golf courses. The "home" web page appears below:



By selecting the “Go to Booking System” link in the above web page, the following web page appears:

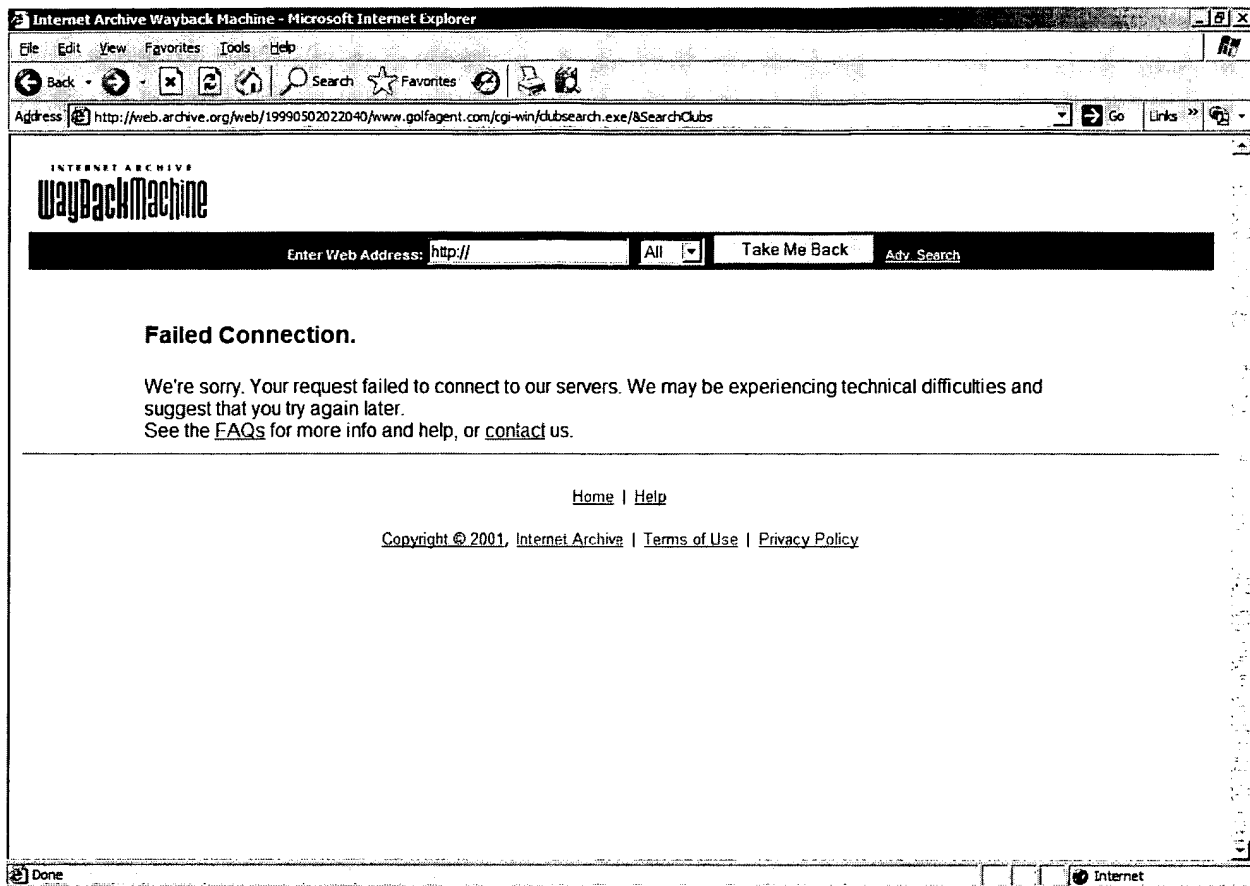


By activating the "Search" button above, the following page is displayed:

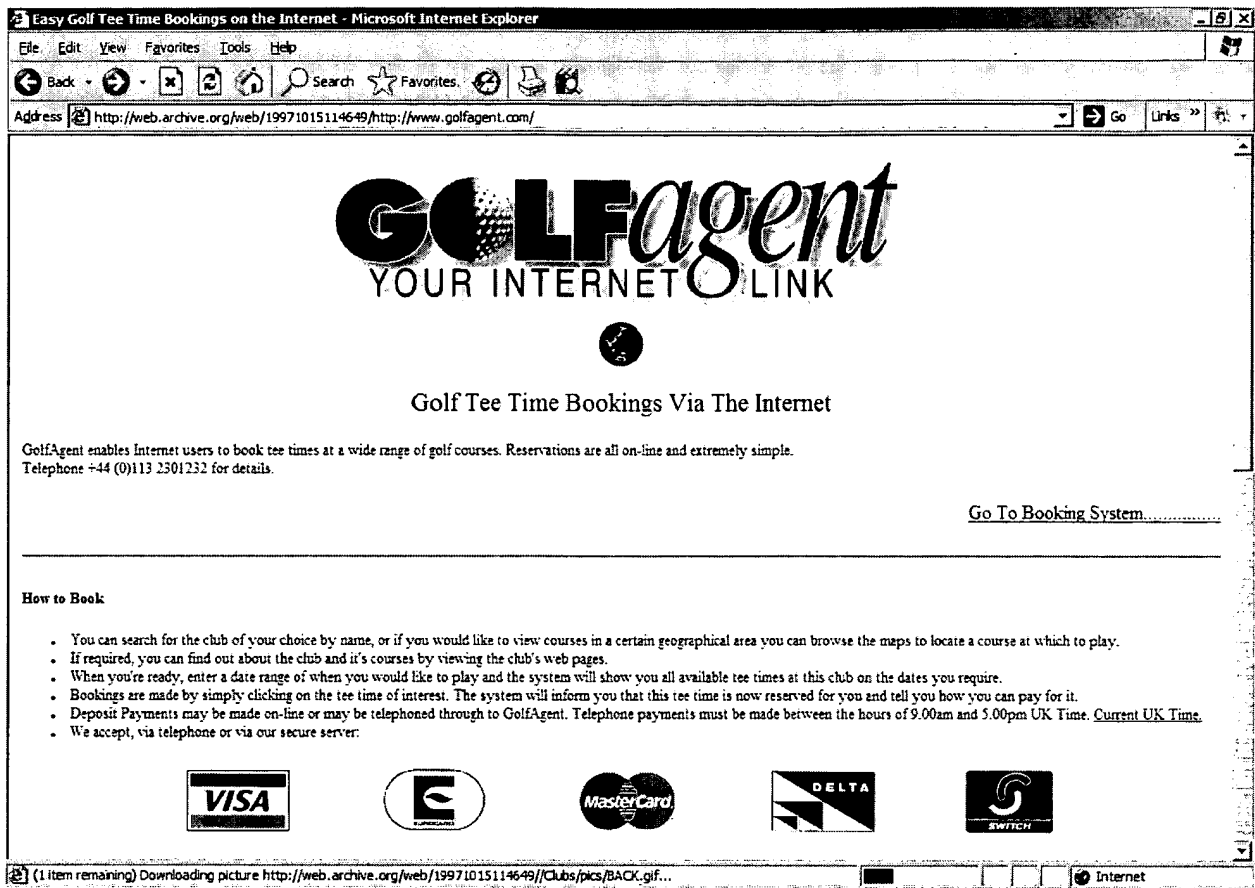


The 4/28/1999 version of the Golf Agent website failed to link to any further web page, instead generating the web page below:

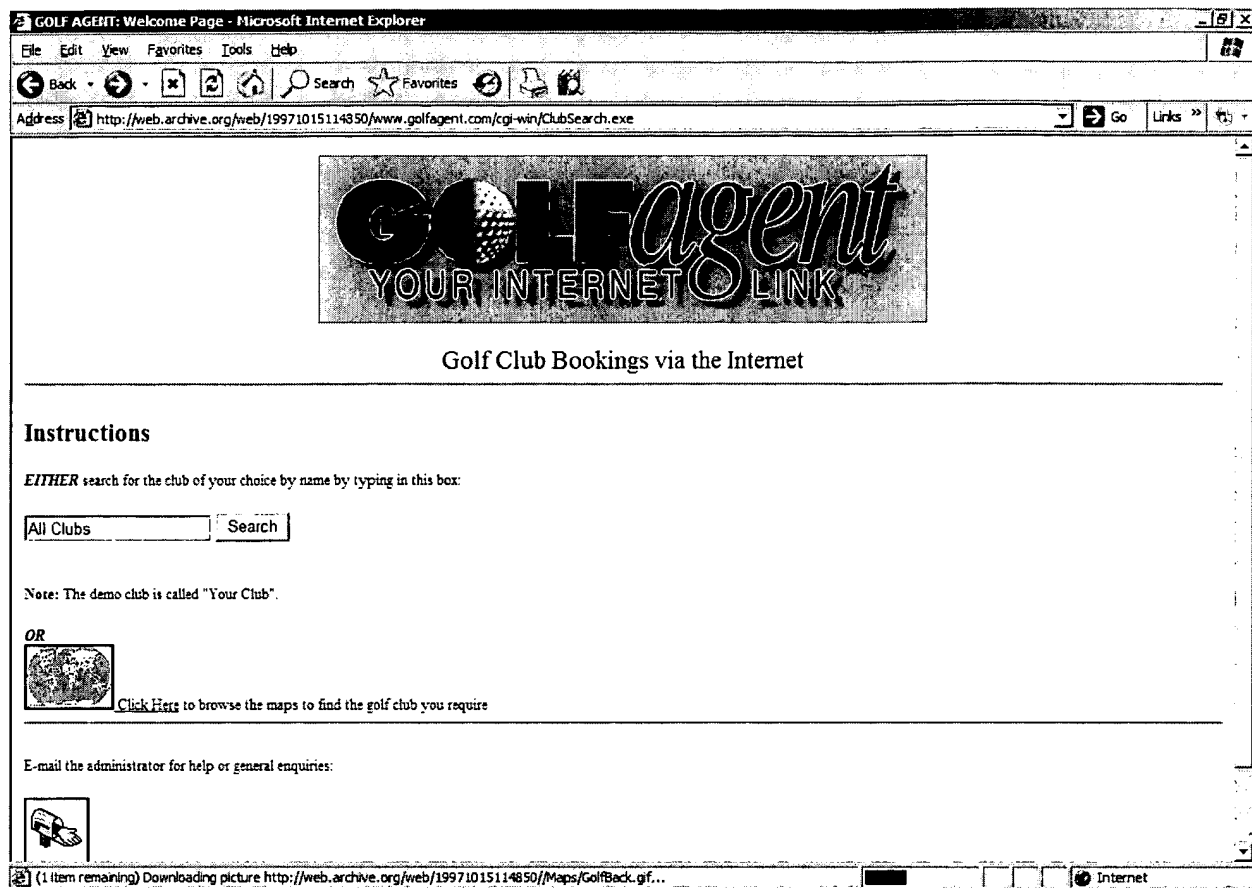
In re: Michael Last
Appl. No.: 09/802,367
Filing Date: March 9, 2001
Page 7



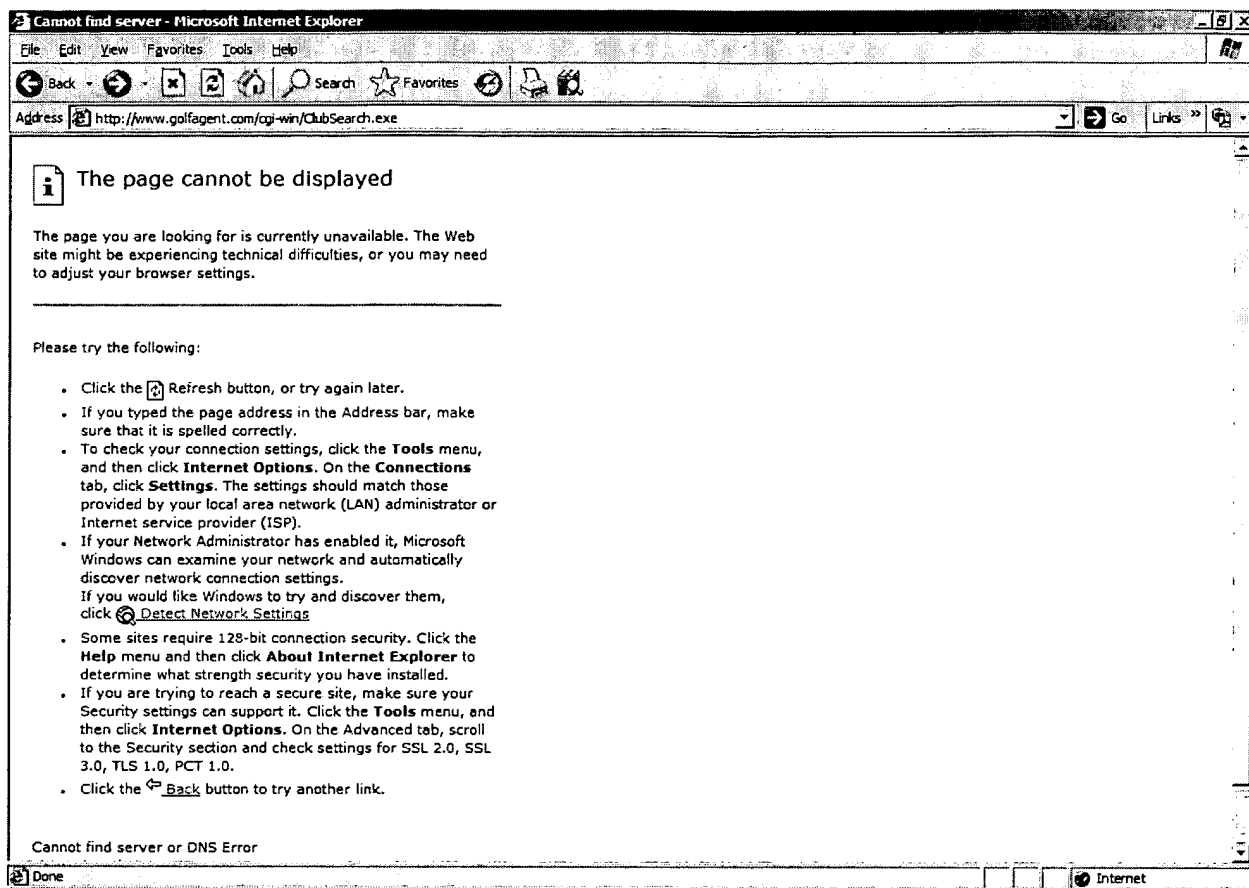
Attached to the Office action are certain excerpts from the 10/15/1997 version of the Golf Agent website , which is provided below:



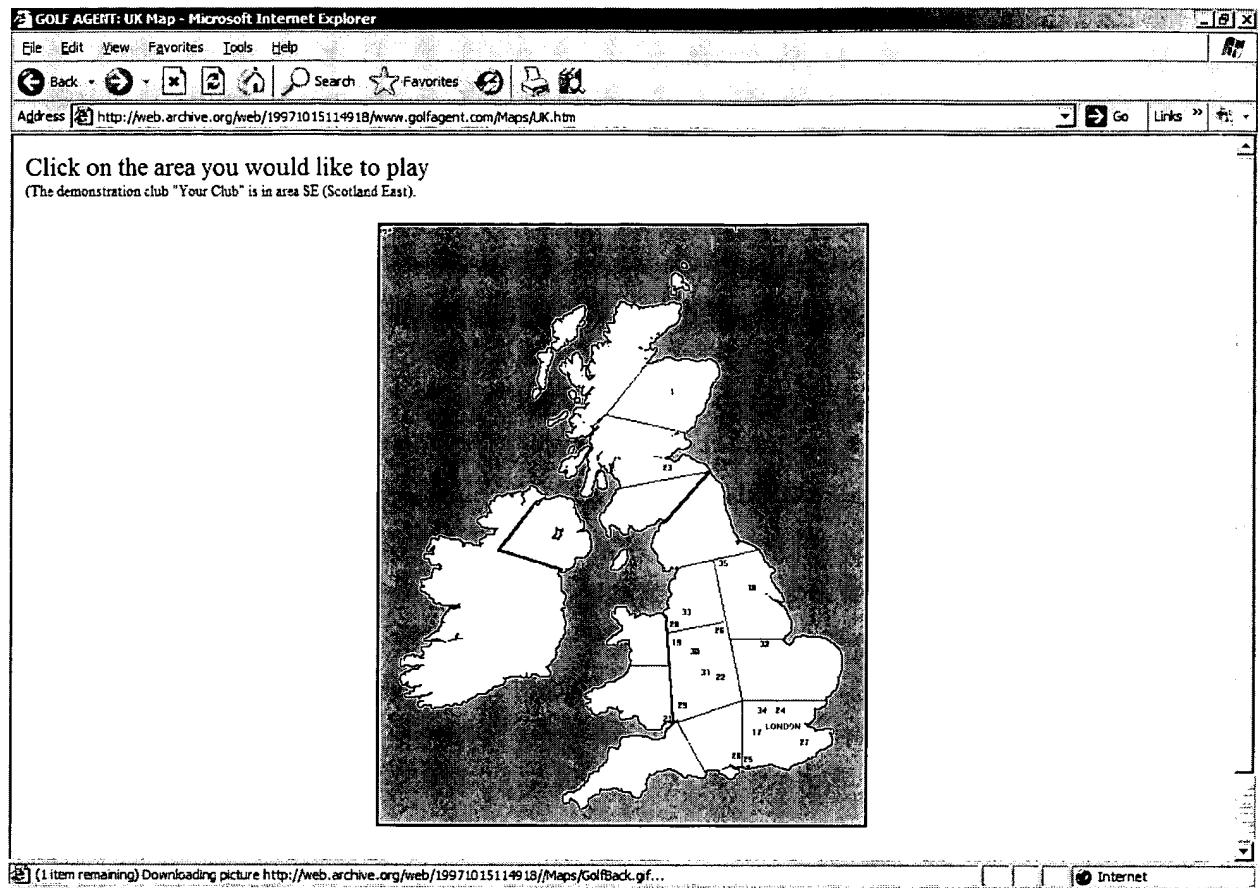
By pressing the "Go to Booking System" link in the above web page, the following web page appears:



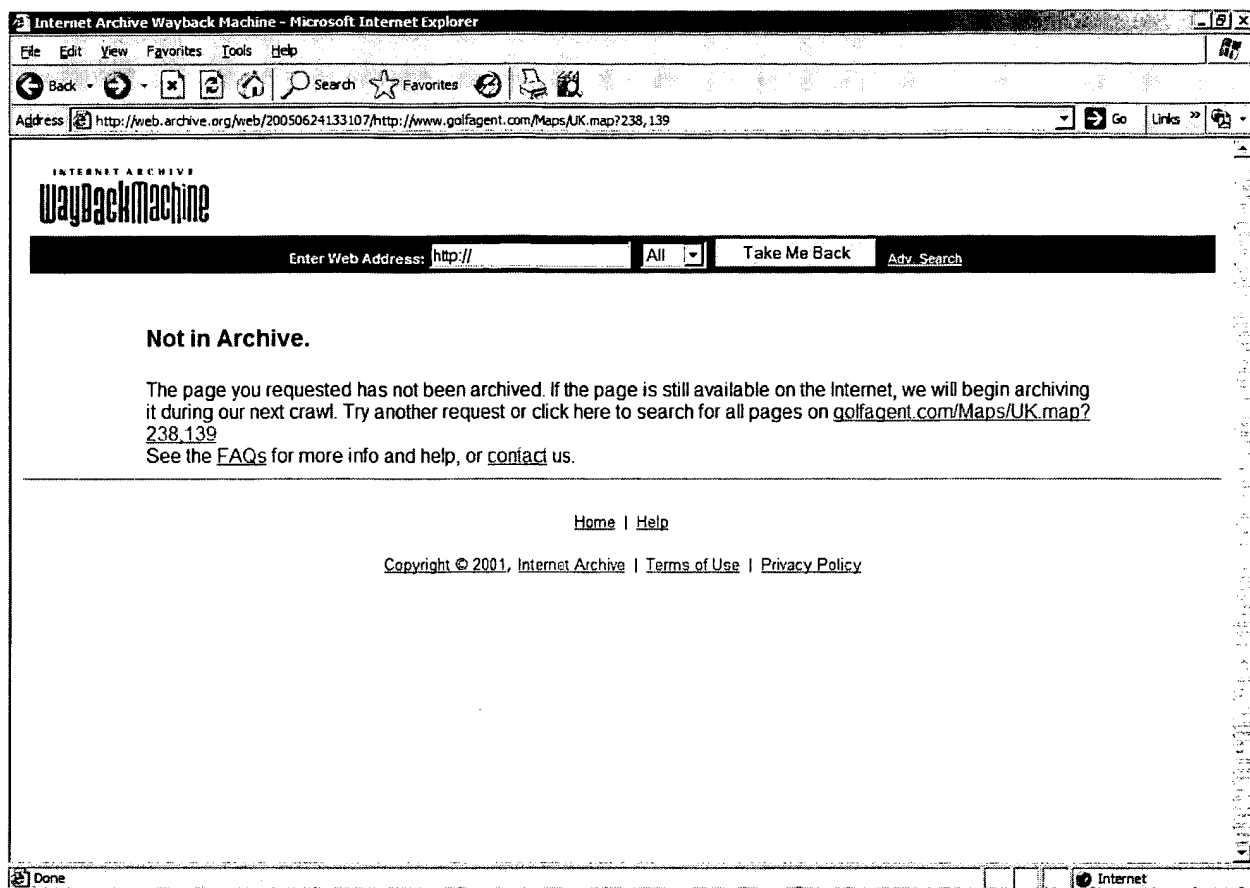
Clicking on "Search" above produces the following web page:



Clicking on the "Click Here" link next to the map yields the following:



Clicking on the regions of the map produces the following web page:



There is no disclosure in the GolfAgent website of any generation of a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, in which the multiple tee times listed as available for each golf course for a date is a subset of all of the tee times at the golf course for the date.

B. Legal Requirements for Obviousness under 35 U.S.C. §103(a)

The determination of whether an invention is or is not obvious is a legal conclusion based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness. *In re Dembiczak*, 175 F.2d 994, 998 (Fed. Cir. 1999) (citing *Graham v. John Deere, Inc.*, 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545, 148 U.S.P.Q. 459, 465 (1966)). The Examiner has the burden of establishing a prima facie case of obviousness under 35 U.S.C. §103(a). *Ex Parte Martin P. Hageman and Thomas J. Palus*,

Appeal No. 2000-1514, Application No. 09/038,450 (citing *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)); *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only if the Examiner satisfies this initial burden does the burden of coming forward with evidence shift to the Appellant. *Id.* The Examiner can satisfy this burden by showing some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. *In re Fine*, 87 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

A *prima facie* case of obviousness requires: (1) a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings; (2) a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re Fine*, 87 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); MPEP § 2142, 8th Ed., Rev. 2. The teaching, suggestion, or motivation to modify or combine features in an effort to obtain the claimed invention must be "clear and particular." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999).

C. Claims 61-67 are Patentable over the Prior Art

C1. Patentability of Independent Claim 61

Claims 61 is recited as follows:

Claim 61. (previously presented) A method comprising the steps of:

with a hub server,
receiving a request for a web page from a golfer computer
via a communications network, the golfer computer located
remotely from the hub server;
in response to the request,
**generating a single web page listing multiple tee times
available at a plurality of golf courses for reservation by
golfers, the multiple tee times indicated as available for each**

**golf course for a date being a subset of all of the tee times at the
golf course for the date; and
transmitting the single web page to the golfer computer
via the communications network.**

The Golf Agent website fails to disclose at least the above-emphasized features of Claim 61. In particular, the Golf Agent website discloses no step of “generating a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, the multiple tee times indicated as available for each golf course for a date being a subset of all of the tee times at the golf course for the date.” This feature of the claimed invention enables a golfer to view a single web page with multiple golf courses and available tee times, not the entire tee sheet for each golf course, from which the golfer can select. The golfer thus is provided with the variety of selections from multiple golf courses and available tee times for those golf courses on a single web page. The golfer thus need not “drill down” into the specific web pages for a golf course, nor need the golfer be redirected to the golf course’s website, either of which requires the golfer to use the move forward and backward buttons of the browser, thus leading to lost time and frustration of the golfer. In contrast, for example, the 12/6/1998 version of the Golf Agent website states “When you’re ready, enter the date range of when you would like to play and the system will show you all available tee times at this golf club on the dates you require.” (emphasis added). The entry of a date range for a single golf course is tantamount to the “shot in the dark” approach in which it is very possible that the golfer will receive a response of “not available” and thus become frustrated in using the system. In addition, the language limiting the search to “this golf club” suggests the GolfAgent website is golf-course-specific “drill down” style architecture, and in contrast to the claimed invention, does not list multiple available tee times for multiple golf courses on a single web page. In addition, in the claimed invention, the additional step of “transmitting the single web page to the golfer computer via the communications network” is necessarily not disclosed in the Golf Agent website since it does not disclose generating a single web page with multiple available tee times for multiple golf courses, which are a subset of the available tee times of each golf course. Thus, it is submitted that Claim 61 is patentable over the Golf Agent website.

C2. The Official Notice Issue

The Office action admits that “GolfAgent does not explicitly disclose that the multiple tee times at *a plurality of golf courses* are generated on a single web page.” However, the Examiner has taken Official Notice, alleging that it is old and well known to display reservation times from a plurality of entities on a single web page in the travel industry, specifically referencing airline, hotel or vehicle rental reservations. M.P.E.P. §2144.03 states as follows:

Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While “official notice” may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 C.F.R. 1.113. Official notice unsupported by documentary evidence should only be taken but the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 U.S.P.Q. 418, 420 (C.C.P.A. 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute.” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 U.S.P.Q. 6 (C.C.P.A. 1961)).

See also In re Zurko, 258 F.3d 1379, 1385, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001)(suggesting it may be appropriate to use Official notice on dependent claims in a first Office action, but not for independent claims or final rejections). It was error to take Official Notice of the allegation regarding reservation systems used in the travel industry, especially in relation to an independent claim. *Id.* The allegation for which Official Notice has been taken is not capable of “instant and unquestionable demonstration as being well-known” as evidenced by the fact that the Examiner has failed to produce it. Official Notice should not be used except where the proposition at issue is supported by common knowledge or capable of unquestionable demonstration. *Ex Parte Christian Val, Yves Van Campenhout, and Dominique Gilet*, 2001 WL

1729669, *2, Appeal No. 1999-0878, Application 08/182,093. When an examiner judicially notices a feature as being old in the art and such is challenged, there is reversible error when the examiner fails to cite the well known thing on which he relies. *Ex Parte Kenneth F. Conklin, David B. Giguere and James C. Chen*, 2002 WL 1801454, *3, Appeal No. 1999-1110, Application No. 081665,755 (citing *Ex Parte Nouel*, 158 USPQ 237 (Bd. of App. 1967)). An examiner's failure to provide objective evidence when official notice is challenged demonstrates that such facts are not capable of "instant and unquestionable demonstration" as being "well-known" in this art. *Ex Parte Peter K. Davies, John D. Schofield and John M. McCarthy*, 1997 WL 33122274, *2, Appeal No. 1997-0666, Application 08/338,830; *see Ex Parte William C. Dodt, Jerry L. Donze, John C. Owens, Brian P. Egan, Ralph L. Butts, and Donald R. Schenck*, 1998 WL 1792484, *3, Appeal No. 1998-2017, Application No. 08/802,216 (The burden was on the examiner to provide evidence in support, which burden was not met); *Ex Parte Soon-Tae Kim*, 2002 WL 1801317, *3, Appeal No. 1998-2497, Application No. 081472,275 (If the alleged fact or facts is/are so unquestionably demonstrable, the examiner should provide evidence of the truth of his allegation); *Ex Parte Sven Nordin*, 2000 WL 33362020, *4, Appeal No. 1996-3960, Application No. 08/380,444 (We are not inclined to dispense with proof by evidence when the proposition at issue is not supported by a teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case); *see also In re Piasecki*, 745 F.2d 1468, 223 USPQ 785, 788 (Fed. Cir. 1984) ([*Graham v. John Deere Co.*, 383 U.S. 1 (1966)] is interpreted as continuing to place the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under section 102 and 103"); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (With respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience -- or on its assessment of what would be basic knowledge or common sense). The Patent Laws (35 U.S.C. §§131, 132) require proper examination with stated reasons therefore, which is not effectively communicated by Official notice under the present circumstances. Therefore, Appellant requests reversal of the rejection under 35 U.S.C. §§103(a), 131, 132 for the foregoing reasons.

C3. Additional Errors

Furthermore, even assuming the reservation systems the examiner alleges existed had multiple reservations available from different airline, hotel, or vehicle rentals on a single web page, there is no motivation in the prior art that would have led a person of ordinary skill in the art to combine such reservation system with the GolfAgent website in an effort to obtain the claimed invention. As noted in *In re Dembiczak*, the teaching, suggestion, or motivation to modify or combine features in an effort to obtain the claimed invention must be “clear and particular.” 175 F.3d 994, 999 (Fed. Cir. 1999). There is no teaching, suggestion or motivation in the prior art that would have led a person of ordinary skill to combine a reservation system alleged to have existed in the travel industry with the GolfAgent website, or vice versa. The Office action has instead engaged in hindsight by in effect using what Appellant has taught in its application against the Appellant. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re Fine*, 87 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); MPEP § 2142, 8th Ed., Rev. 2. In addition, the person of ordinary skill in the art, whose level of skill is undefined in the Office action, would have had no reason or basis upon which to expect success in making the combination. Therefore, for all of the foregoing reasons, the Board of Patent Appeals and Interferences (BPAI) is respectfully requested to reverse this rejection with instructions on remand to promptly issue a Notice of Allowance for all pending Claims.

C4. Objective Evidence of Nonobviousness

Among the objective evidence that must be considered in an obviousness determination, are included: (1) commercial success of the invention; (2) existence of a long-felt need in the art for the invention; (3) acclaim for the invention by experts in the field; (4) failed attempts of others; (5) evidence of copying of the invention by others; and (6) unexpected results attained by the invention. *In re Dembiczak*, 175 F.2d 994, 998 (Fed. Cir. 1999) (citing *Graham v. John Deere, Inc.*, 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545, 148 USPQ 459, 465 (1966)). See also *Pro-Mold and Tool Co., Inc. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 37 USPQ2d 1626 (Fed. Cir. 1996).

C4.1. Commercial Success of the Claimed Invention

In Exhibit 1 - Paragraphs 39-45 of his Declaration filed with Amendment on January 28, 2005, Mr. Last testifies regarding the commercial success of the claimed invention. In particular,

he indicates that providing the golf course user with a web based interface that allows for easy selection of specific tee times to “internet enable” is an important factor in the success of the LMTT system embodying the claimed method. In addition, by generating a signal web page that displays a subset of available tee times at a plurality of golf courses, a golfer is provided with the right amount of choice to select a tee time without overwhelming the golfer with complicated queries that often lead to frustration. In addition, if a golf course has numerous tee times available and displays them all, then for various reasons golfers may avoid playing the golf course, a problem which the claimed method helps to avoid by posting a subset of available tee times rather than the entire tee sheets of golf courses. As Mr. Last’s Declaration makes clear, the growth of use of the LMTT system has been staggering in terms of use by golfers and golf courses, and its financial success is manifest, due in large part to use of the methods of Claims 61-67.

Attached as Exhibit 3 is the Declaration of Joseph Ferguson (hereinafter “Mr. Ferguson”). In Paragraphs 2-3 of his Declaration, Mr. Ferguson testifies that he appreciated the value of LMTT system in providing a golfer web interface listing multiple tee times, but less than all tee times for the entire golf day, for each of multiple golf courses on a single web page, so much so he considered investing in the company.

In Exhibit 4 – Paragraph 5 of his Declaration, Carl Danbury (hereinafter “Mr. Danbury”) indicates that dozens of golfers that play in his numerous golfing events each year comment on using the LMTT website to reserve tee times and appreciate the convenience it provides through the booking interface.

In Exhibit 5 – Paragraph 5 – 6 of his Declaration, Brandy Jones (hereinafter “Mr. Jones”) testifies that golfers who reserve tee times at the LMTT website to play golf at his golf course routinely comment on how easy the LMTT website is to use due to its simplified golfer interface, and that in his own experience use of the golf course interface has been easy. This testimony evidences the commercial success of the LMTT website due to its implementation of the methods of Claims 61-67.

In Exhibit 6 is an article published May 2000 in Golf News – Georgia’s Golf Newspaper. The article describes the significant growth of golfers and golf course users using the LMTT website, and their appreciation of its benefits.

Exhibit 7 is an article published in Atlanta Catalyst magazine explaining some of the benefits of the LMTT website that have led to its commercial success.

C4.2. Long-Felt Need in the Art

In Exhibit 1 - Paragraphs 46 - 51 of his Declaration, Mr. Last makes it clear that there was a long-felt need for the invention at the time it was made. In particular, Mr. Last notes that golfers recall the difficulties of reserving tee times back in 1999, and what an improvement LMTT's system was over the way in which the majority of tee times were then made. Mr. Last notes in his Declaration that one golfer, Scott from Detroit, representative of many, indicates that previous websites for reserving tee times were extremely difficult to use, and notes that using the LMTT website is easier than calling golf courses directly to reserve a tee time.

In Exhibit 3 - Paragraph 2-6 of his Declaration, Mr. Ferguson testifies that his research in early to mid 2000 when considering making an investment in LMTT indicated that other websites did not have the LMTT system's golfer web interface listing multiple tee times, but less than all tee times for the entire golf day, for each of multiple golf courses on a single web page. He appreciated then the value of this golfer web interface over other that had existed at that time.

In Exhibit 4 - Paragraph 3-4 of his Declaration, Mr. Danbury testifies that he looked at similar tee time services in early 2000, but could find none that compared with LMTT's booking page and interface for the consumer, and was so intrigued that he invested in LMTT.

In Exhibit 5 - Paragraph 3 - 4 of his Declaration, Mr. Jones testifies that in his seven years in golf, LMTT was the first to provide a golfer interface via the Internet listing multiple tee times at each of multiple golf courses without listing the entire tee sheet of the golf course.

C4.3. Acclaim for the Invention by Experts

In Exhibit 1 - Paragraph 52 of his Declaration, Mr. Last testifies regarding an email received from a golfer by the name of Andrew Prinz. He explains that after years of frustration, through the LMTT website, he can look at available tee times at over 40 different courses in one screen shot, expressing gratitude to LMTT for making its website available. His years of experience with golf qualify him as an expert in the field.

In Exhibit 4 - Paragraphs 2 and 5 of his Declaration, Carl Danbury indicates that he was so impressed with the service and Web site booking module of LMTT, that he decided to profile

his service and company for the first issue of Points North magazine. Given his extensive experience with golf, it is fair to say that he is an expert in this field.

In Exhibit 5 – Paragraphs 5 and 6 of his Declaration, Mr. Jones testifies that golfers he encounters routinely comment on the ease of use of the LMTT website, and further testifies that as a golf course user using the LMTT interface to post tee times to the hub server, the LMTT interface is easy to use. Mr. Jones has over seven years of experience in golf.

C4.4. Failed Attempts of Others

In Exhibit 1 - Paragraphs 53 and 54 of his Declaration, Mr. Last testifies as to the failed attempts of others to derive the claimed methods. He testifies that websites that attempt to put the entire tee sheet of a golf course on their websites go out of business due to golfer frustration in using such websites. In addition, those websites that require a golfer to take a “shot in the dark” to effectively guess which tee times of a golf course are available, are very frustrating to golfers, leading to their avoidance of such websites, and decline of their businesses. Mr. Last testifies that most of the original tee time reservation websites from 1999 have now gone out of business or have been acquired for relatively little, and of those that remain, most have abandoned their old approaches to copy the LMTT website and the claimed methods.

In Exhibit 5 – Paragraph 7 of his Declaration, Mr. Jones testifies that in his experience, golf websites that are single golf course websites, or that list the entire tee sheet of a golf course, or that require a complex search on the part of the golfer, usually fail by employing these strategies.

Exhibit 8 is a listing of tee time reservation websites that are believed to have gone out of business. The website www.thegolfer.com used a complex “shot in the dark” approach similar to the Linkstime website, in which the golf course, date, time, etc. must be specified just to be able to check whether a tee time is available, an approach that greatly frustrates the golfer.

Exhibit 9 is another website similar to the Linkstime website, www.teematic.com, in which the golfer must specify the city, number of golfers in party, size of course, date of play, time of play, latest time of play acceptable to the golfer, and price range. One can readily appreciate that to enter all of this data only to find that the tee time is not available for the data specified, requiring re-entry of data, is a great source of frustration to golfers attempting to use websites of this nature.

C4.5. Copying

In Exhibit 1 - Paragraphs 55-71, Mr. Last testifies to the extensive copying of the claimed methods, in many cases with direct evidence of copying of these methods from the LMTT website by others. The Tee Time King website, Golfviews.com / E-Golf.net website, Last Chance Tee Times website, and Click 4 Tee Times website, and the suspicious circumstances surrounding their adoption of features similar to the claimed methods, all tend toward the inescapable conclusion that the LMTT website and claimed method have been copied by developers of other websites. By copying the claimed features of the LMTT website, it is evident that the copyists have learned to appreciate the merit of the claimed methods, and the commercial success attainable with them.

C4.6. Unexpected Results

In Exhibit 1 - Paragraph 72, Mr. Last testifies regarding the unexpected and desirable results achieved by the claimed methods. In particular, he notes that most would view it counterintuitive not to provide the golfer with all possible choices for tee times in which the golfer may be interested. In fact, this approach has proven fatal to many tee time reservation websites. Mr. Last testifies that contrary to popular thinking, the counterintuitive approach of limiting the amount of tee times per course, but including multiple courses to choose from, is a key to success, producing results unexpected by many websites that have operated in this industry.

D. Dependent Claims 62 - 67

Claims 62 through 67 depend from Claim 61 and include all the limitations of that Claim. Thus, for the reasons stated above, all of Claims plus additional limitations which are not taught or suggested by the prior art.

For example, Claim 62 recites:

Claim 62. (previously presented) A method as claimed in Claim 61 further comprising the steps of:

receiving specific tee times posted by a plurality of golf course users' computers via the communications network, the golf course users' computers located remotely from the hub server and the golfer computer;

**storing the available tee times in a database; and
in response to the request,**

**retrieving the available tee times from the database for
use in the generating the single web page.**

The Golf Agent website fails to disclose at least the above-emphasized steps of receiving, storing and retrieving available tee times for multiple golf courses for use in generating the single web page listing multiple available tee times in correspondence with multiple golf courses for the golfer's selection, as recited in Claim 62. To the limited extent it can be understood given that many of its links do not work, the Golf Agent website appears to be at best a "drill down" architecture in which a golfer must request a listing of golf courses, then select a golf course, then further specify a date and tee time, then reserve a tee time (how this is done and whether by email, telephone or otherwise is not known from the archives of the Golf Agent website). Even assuming that the Golf Agent website disclosed hosting of multiple golf courses' on-line reservation systems, there is no disclosure of use of data for available tee times from multiple golf courses to generate a single web page listing of available tee times at the multiple golf courses without listing the golf courses' entire tee sheets (i.e., a subset of all tee times). This feature is important to providing a single web page listing that a golfer can use to reserve a tee time efficiently and with ease, thus greatly enhancing the golfer's experience in reserving a tee time online and increasing the likelihood that the golfer will continue to reserve tee times online. Claim 65 recites that "the listing of multiple available tee times are next-day tee times for respective golf courses." The Golf Agent website fails to disclose this feature of the claimed invention, which enables multiple golf courses to sell tee time inventory that would otherwise be lost. Claim 66 recites that "the request designates a specific geographic region and the single web page is generated to list available tee times for only the golf courses in this specific geographic region." The Golf Agent website fails to disclose generation of the single web page to list available tee times for only the golf courses in the specific geographic region designated by the request, as recited in Claim 66. This feature provides additional benefits to the golfer by enabling the golfer to view available tee times at multiple golf courses only within a specific geographic region of interest to the golfer. Claim 67 recites that "the request includes a date on which the golfer desires to play but does not require the golfer to specify the golfer's desired time of play in order to generate a list of available tee times." This feature of the claimed

invention eliminates the “shot in the dark” approach in the prior art in which a golfer specifies a tee time only to receive a response “not available” which greatly frustrates the golfer. This feature too is not disclosed in the Golf Agent website. Thus, it is submitted that Claims 62-67 are patentable over the prior art of record for these reasons as well as for the reasons stated above with respect to Claim 61. Reversal of the rejection of Claims 62-67 is requested.

E. Summary of Errors

E.1. Errors in Failing to Establish the Scope and Content of the Prior Art

The Office action has failed to establish the scope and content of the prior art by not showing where the Golf Agent website, Official notice, or combination of the two provides a method performed by a hub server in which a single web page listing multiple golf courses is generates a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, the multiple tee times indicated as available for each golf course for a date being a subset of all of the tee times at the golf course for the date. In fact, the Office action admits that the GolfAgent website does not show this feature (“Golf agent does not explicitly disclose that the multiple tee times at *a plurality of golf courses* are generated on a single web page” – Office action dated October 7, 2005). The Office action attempts to supply the missing disclosure by taking Official notice of reservation systems alleged to have existed in the travel industry, which is highly improper under precedent, especially for an independent claim. *In re Dembiczak*, 175 F.2d 994, 998 (Fed. Cir. 1999) (*citing Graham v. John Deere, Inc.*, 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545, 148 U.S.P.Q. 459, 465 (1966)); 35 U.S.C. §103(a).

E.2 The Differences between the Prior Art and the Claims at Issue

Having failed to establish the scope and content of the prior art, as noted above, it would be impossible for the Office action to properly consider the differences between the prior art and the claims at issue. One correct observation by the Office action is the admission noted above that the Golf Agent website does not disclose listing multiple tee times at a plurality of golf courses on a single web page. One cannot attempt to cover this significant difference, a major reason for the commercial success of Last Minute Tee Times, Inc. over its competitors, by taking Official notice of reservation systems alleged to have existed in the travel industry. The taking of Official Notice violates proper examination and the requirement to explain the reasons for rejection required by 35 U.S.C. §§103(a); 131, 132.

E.3 The Level of Ordinary Skill in the Art

The Office action does not attempt to establish the level of ordinary skill in the art, nor does the record in general establish it, in violation of the proper approach to obviousness. 35 U.S.C. §103(a) as interpreted in *In re Dembiczak*, 175 F.2d 994, 998 (Fed. Cir. 1999) (*citing Graham v. John Deere, Inc.*, 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545, 148 U.S.P.Q. 459, 465 (1966)); 35 U.S.C. 103(a).

E.4 Objective Evidence of Nonobviousness

The record is replete with objective evidence of nonobviousness which has not been considered or given due weight. The Declarations and Exhibits identified in the evidence appendix establish commercial success of the invention, long-felt need in the art for the invention, acclaim for the invention by experts, failed attempts of others, copying, and unexpected results. In short, this evidence tells the story of how Last Minute Tee Times, Inc. was able to prevail in the market over the vast majority of competitive websites that used the “shot in the dark” approach to search for tee times, or complicated “drill down” websites requiring significant navigation, or those websites which overwhelmed the golfer with the entire tee sheet of a golf course. *In re Dembiczak*, 175 F.2d 994, 998 (Fed. Cir. 1999) (*citing Graham v. John Deere, Inc.*, 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545, 148 U.S.P.Q. 459, 465 (1966)); 35 U.S.C. 103(a); 131, 132.

E.5 No Suggestion or Motivation to Modify or Combine the Alleged Prior Art

There is no evidence of record that would indicate that a person of ordinary skill in the art would have been motivated by the prior art to combine the GolfAgent website with reservation systems alleged to have existed in the nonanalogous travel industry. One cannot take Official notice of motivation when combining references. *Ex part Calvin J. Bittner et als.*, 2002 WL 1801359, Appeal No. 1998-3398, Application No. 08/634,515p. 2 (Bd.Pat.App. & Interf.); *Ex Parte Martin P. Hageman and Thomas J. Palus*, Appeal No. 2000-1514, Application No. 09/038,450 (*citing In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)); *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984); 35 U.S.C. 103(a); 131, 132.

E.6 No Reasonable Expectation of Success

As demonstrated above, the GolfAgent website incorporates aspects of both the “shot in the dark” and “drill down” approaches which have proven to be disastrous in commercial contexts. Not only is there no reasonable expectation of success if one were to combine the Golf Agent website with Official notice of alleged reservations systems, there is the opposite – a certainty of failure. As the above evidence establishes, approaches like that taken in the Golf Agent website have proven fatal to websites that use them time and time again. *Ex Parte Martin P. Hageman and Thomas J. Palus*, Appeal No. 2000-1514, Application No. 09/038,450 (citing *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)); *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984); 35 U.S.C. 103(a); 131, 132.

E.7 The Prior Art References When Combined Must Teach or Suggest All of the Claim Limitations

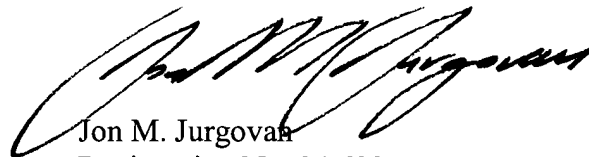
The Office action admits that the GolfAgent website does not disclose a method in which a hub server generates a single web page showing multiple tee times available for reservation at a plurality of golf courses, the multiple tee times indicated as available for each golf course for a date being a subset of all of the tee times at the golf course for the date (“Golf agent does not explicitly disclose that the multiple tee times at *a plurality of golf courses* are generated on a single web page” – Office action dated October 7, 2005). To attempt to supply the missing features by Official notice is clear error, especially given that there is evidence that the GolfAgent website uses both the “shot in the dark” and “drill down” approaches which are not the methods of Claims 61-67, but teach away from them. *Ex Parte Martin P. Hageman and Thomas J. Palus*, Appeal No. 2000-1514, Application No. 09/038,450 (citing *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)); *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984); 35 U.S.C. 103(a); 131, 132.

CONCLUSION

For all of the foregoing reasons, Appellant hereby requests reversal of the rejection of Claims 61-67 under 35 U.S.C. 103(a) with instructions on remand to promptly issue a Notice of Allowance for all pending Claims.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Jon M. Jurgovan
Registration No. 34,633

CUSTOMER NO. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Atlanta Office (404) 881-7000
Fax Atlanta Office (404) 881-7777

"Express Mail" mailing label number EV 653456120 US
Date of Deposit April 20, 2006

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to:
Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450


Shelley Victoria

8. Claims Appendix

Claims 1 - 60 (canceled).

Claim 61. (previously presented) A method comprising the steps of:

with a hub server,

receiving a request for a web page from a golfer computer via a communications network, the golfer computer located remotely from the hub server;

in response to the request,

generating a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, the multiple tee times indicated as available for each golf course for a date being a subset of all of the tee times at the golf course for the date; and

transmitting the single web page to the golfer computer via the communications network.

Claim 62. (previously presented) A method as claimed in Claim 61 further comprising the steps of:

receiving specific tee times posted by a plurality of golf course users' computers via the communications network, the golf course users' computers located remotely from the hub server and the golfer computer;

storing the available tee times in a database; and

in response to the request,

retrieving the available tee times from the database for use in the generating the single web page.

Claim 63. (previously presented) A method as claimed in Claim 61 further comprising the steps of:

receiving a reservation for a selected golf course and tee time from the user computer via the communications network;

storing the reservation in the database; and

transmitting the reservation to the computer of the selected golf course via the communications network.

Claim 64. (previously presented) A method as claimed in Claim 61 wherein the communications network is the Internet.

Claim 65. (previously presented) A method as claimed in Claim 61 wherein the listing of the multiple available tee times are next-day tee times for respective golf courses.

Claim 66. (previously presented) A method as claimed in Claim 61 wherein the request designates a specific geographic region and the single web page is generated to list available tee times for only the golf courses in the specific geographic region.

Claim 67. (previously presented) A method as claimed in Claim 61 wherein the request includes a date on which the golfer desires to play but does not require the golfer to specify the golfer's desired time of play in order to generate a list of available tee times.

Claims 68-70 (canceled).

9. Evidence Appendix

1. Declaration of Michael E Last – Exhibit 1 with corresponding Exhibits A through O, Amendment filed January 28, 2005
2. Declaration of Joseph P. Abele – Exhibit 2 with corresponding Exhibit A, Amendment filed January 28, 2005
3. Declaration of Joseph Ferguson – Exhibit 3 with corresponding Exhibit A and B, Amendment filed January 28, 2005
4. Declaration of Carl Danbury – Exhibit 4 with corresponding Exhibit A, Amendment filed January 28, 2005
5. Declaration of Brandy Jones– Exhibit 5, Amendment filed January 28, 2005
6. Golf News, Booking a tee time just a point, click away – Exhibit 6, Amendment filed January 28, 2005
7. Atlanta Catalyst, Targeting those who precipitate change – Exhibit 7, Amendment filed January 28, 2005
8. The Golfer.com, Services member course – Exhibit 8, Amendment filed January 28, 2005
9. Tee Matic Systems, Welcome to the Web's first real-time golf reservations – Exhibit 9, Amendment filed January 28, 2005
10. Declaration of Michael E Last dated August 26, 2004 – Exhibit 10, Amendment filed August 27, 2004

10. ***Related Proceedings Appendix.***

Not Applicable.